

Exhibit 87

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

- - - -

CSX TRANSPORTATION, INC.,) Civil Action No.
individually and on behalf) 2:18-cv-530-MSD-LRL
of NORFOLK & PORTSMOUTH)
BELT LINE RAILROAD)
COMPANY,)

Plaintiff,)

- vs -)

NORFOLK SOUTHERN RAILWAY)
COMPANY, et al.,)

Defendants.)

- - - -

DEPOSITION OF: PHILIP MERILLI

- - - -

DATE: March 2, 2020
Monday, 10:04 a.m.

TAKEN BY: Plaintiff CSX
Transportation, Inc.

LOCATION: McGuire Woods, LLP
Tower Two-Sixty
260 Forbes Avenue
Suite 1800
Pittsburgh, PA 15222

REPORTED BY: Tammie Elias, RPR
Notary Public
No. TE71367

Job No. CS3984173

1 Q. Was the discussions that you had with
2 Mr. Summy about the April 6, 2018 letter part
3 of the same discussions with respect to the
4 earlier rate proposal from CSX?

5 MR. MULLINS: I'd just caution the
6 witness that's a yes or no question. Content
7 of communication.

8 A. Yes.

9 BY MR. McFARLAND:

10 Q. Did you at any point seek the counsel of any
11 attorney other than one who was employed by
12 Norfolk Southern with respect to your
13 involvement as a board member of NPBL and
14 Mr. Armbrust's letter of April 6, 2018?

15 A. No.

16 Q. As a board member of the Belt Line, did the
17 board sometimes review and approve contracts
18 that the NPBL entered into?

19 A. None that I recall besides -- no, none that I
20 recall.

21 Q. Were there any of Mr. Armbrust's proposed
22 actions found on pages 6387 and 6388 that you
23 agreed with as a board member of the NPBL?

24 A. Yes.

25 Q. And which ones?

1 A. C and D, if they were not already in place.

2 Q. And do you know if during your remaining
3 tenure on the board, there was any
4 implementation of the actions outlined in C
5 and D?

6 A. As a board member, it never came up in a board
7 meeting.

8 Q. So I think if this letter is dated April 6,
9 2018, my recollection is there was a board
10 meeting on April 18th of 2018, and you're
11 indicating that nothing came as to
12 implementation of the items in C and D at that
13 April 18th, 2018 board meeting; correct?

14 A. Correct.

15 Q. And then I believe there was another board
16 meeting in December of 2018, the exact date of
17 which I think we'll come across in a little
18 bit, but am I correct that to the best of your
19 recollection, there was no implementation of
20 the items in C and D at the December 2018
21 board meeting?

22 A. Correct.

23 Q. And would that have been your last board
24 meeting?

25 A. No. I made -- I was at the April 2019

1 Belt Line used were, in fact, leased from
2 Norfolk Southern?

3 A. Actually I did not.

4 MR. CHAPMAN: Object to the form of
5 that question.

6 BY MR. McFARLAND:

7 Q. Do you recall any discussion of the items in
8 the bullet points on Merilli 15 at any of the
9 board meetings you attended?

10 A. Not that I remember, no.

11 Q. The last bullet point references that "NPBL
12 management has reviewed the proposed rate and
13 would recommend to the board for a rate
14 committee to do a complete review of the
15 tariff."

16 Do you know if there was ever -- if
17 the recommendation here from NPBL management
18 was ever followed by the board?

19 A. Without looking at the minutes, I don't
20 remember it coming up at a board meeting. I
21 don't remember that.

22 MR. McFARLAND: My next exhibit is
23 the document found at tab 23, bates number
24 NPBL 006232 through 636.

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